IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

No. 5:12-CR-339-D No. 5:15-CV-358-D

ERIC BRANCH,)	
Petitioner,)	
v.)	ORDER
UNITED STATES OF AMERICA,)	
Respondent.	·)	

On July 27, 2015, Eric Branch ("Branch") filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 [D.E. 121]. On September 14, 2015, the government moved to dismiss Branch's motion [D.E. 126]. On November 19, 2015, the court denied the government's motion to dismiss and referred Branch's ineffective-assistance claim to Magistrate Judge Gates for an evidentiary hearing and a memorandum and recommendation ("M&R") [D.E. 130]. On March 8, 2016, Judge Gates held an evidentiary hearing. See [D.E. 139] (minute entry); [D.E. 139] (transcript). On December 14, 2016, Judge Gates issued an M&R [D.E. 145]. In that M&R, Judge Gates recommended that petitioner's section 2255 motion be dismissed. Neither party objected to the M&R.

"The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the magistrate judge's report or specified proposed findings or recommendations to which objection is made." <u>Diamond v. Colonial Life & Accident Ins. Co.</u>, 416 F.3d 310, 315 (4th Cir. 2005) (emphasis, alteration, and quotation omitted); <u>see</u> 28 U.S.C. § 636(b). Absent a timely objection, "a district court need not conduct a de novo review, but instead must only satisfy itself that

there is no clear error on the face of the record in order to accept the recommendation." <u>Diamond</u>, 416 F.3d at 315 (quotation omitted).

The court has reviewed the M&R, the record, and the briefs. The court is satisfied that there is no clear error on the face of the record. Accordingly, the court adopts the findings and conclusions in the M&R [D.E. 145]. Branch's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 [D.E. 121] is DISMISSED. The court DENIES a certificate of appealability. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000). The clerk shall close the case.

SO ORDERED. This 14 day of March 2017.

JAMES C. DEVER III

Chief United States District Judge